Question: **To what extent do the following factors influence an advertiser or advertising agency to adopt a "no Urban dictate" policy?**	**Average Response on a scale of 1 to 10** *(1 denotes the highest level of importance)*
Format that targets the minority audience	2
Audience income	4
Audience age	6
Station ownership by an ethnic minority	6

Respondents to CRF's survey were also asked to rate factors that influence advertisers to impose "minority discounts." The "minority composition of the audience" on average was rated three on a scale of one to ten; "audience income and minority audience composition as even factors" on average was rated four; the "ability to reach minorities by means of general media" (*e.g.*, general market radio) also was rated four; and "audience income" was rated five. Significantly, the minority composition of the audience was rated first and the income of the audience— as a single factor—was rated last.

Question: **In your estimation which of the following factors influences advertisers or advertising agencies to impose "minority discounts?"**	**Average Response on a scale of 1 to 10** *(1 denotes the highest level of importance)*
Racial/ethnic composition of audience	3
Evenly, audience income and racial/ethnic composition	4
Ability to reach minority audience via general market media outlets not targeted to minorities	4
Audience income	5

The survey questionnaire also asked if "minority discounts" are likely to be imposed on a minority-targeted station even though the income of its audience is comparable to that of non-minorities in the market. Seventy percent of the respondents said that the rate for spot sales[125] would be discounted in such instances. Seven percent said they would not, and 23 percent declined to respond based upon lack information.

[125] A spot sale is an advertisement for a stipulated length of time (*e.g.* 60 seconds) and duration (*e.g.* five times a day for twenty days).

The dilemma of whether race or income is the primary factor in influencing media bias was addressed by Tom Castro, Chairman and President of El Dorado Communications. On average, he maintains, the Hispanic household is larger than that of the general population. While per capita income may be low, household consumption is greater in certain product categories. Nonetheless, negative stereotypes often deter Spanish radio buys. According to Mr. Castro:

> *If I'm selling groceries, Hispanics are the best possible consumers that there are. And this is not my data. Its been demonstrated by many people that Hispanics will spend more (as an index against a norm). Hispanics will overspend on groceries compared to everybody else. So if you use the index of 100 with 100 being the norm, Hispanics might index at 120 or 130% for groceries. Why? Because the households are larger; because the family structure and lifestyle is such that people don't go out to eat at restaurants as much. They eat with each other more. And so, Hispanics are great consumers for groceries and everything that's inside of a grocery store which might be 30% of what you hear on a radio station, 40% of the advertising is either the grocery store itself or all the products you find inside of grocery stores. So if logic held, you would spend more to reach that Hispanic consumer than you would spend to reach anybody else. Because you know that once you reach 'em, they're going to spend 20 or 30% more than the typical consumer will for those kind of products. Well, instead what you find is people telling you, "Well, we don't advertise to Hispanics. Or when we do it's a token buy." As opposed to really seriously going after the consumer. Why is that? Usually, people will be economically rational. I think it's a combination of things. On the one hand, you have prejudice, which is hard to quantify and prove, but is there. And there are just people who say, "Well, I don't want Hispanics in my grocery store." Or you have consumer product people sitting in a place like Cincinnati or Minnesota, or some other location where there are not a lot of Hispanics. So all they know about Hispanics is they've been to Mexico once or twice and saw a lot of poor people there. They watch TV and most of the people on TV that are Hispanic are pimps, prostitutes, illegal aliens, drug dealers, somehow on the opposite side of the law. And so, to them it's not an attractive market.*[126]

Evidence surfaces from time to time indicating a negative view of minority patrons on the part of advertisers. American Airlines issued an apology for stereotyping Hispanics in its pilots' manual. As reported in the New York Daily News:

> *In a section titled, "Survival in Latin America," the manual says that Latin American passengers can become drunk and unruly, don't expect planes to leave on time and that there are reports of people making false bomb threats to delay planes if they are running late.*[127]

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[126] Interview with Tom Castro, El Dorado Communications, page 4.

[127] *Airline to Latin Americans: Sorry,* New York Daily News, August 21, 1997.

The national retail chain, Macy's,[128] was alleged to have unfounded fears of pilferage by minorities. According to Mr. Alvarez:

> *...I was managing a station where the sales [representative] came back and she was practically in tears because the agency had told her that the client said that the reason they don't advertise in the Hispanic market (it was a Macy's department store) was because their pilferage will increase.*[129]

Other individuals interviewed for this study noted that advertisers are cautious about minority consumers due to perceptions linked to stereotypes about thievery. Michael Banks, Station Manager of the urban formatted station WBGE-FM, said he was told by one potential advertiser:

> *Your station will bring too many Black people to my place of business.*[130]

Another example was provided by the Co-Owner of an AM/FM in the southern region:

> *[F]or example, 4 or 5 years ago a store moved [from New York] to Huntsville... on the South end of town. [Huntsville] is divided racially by North and South. Most of the Blacks live North. And in this very nice little strip mall, this guy said, "I know I need your audience. Your people spend more than the average White customer that comes in here. And let me try you." So we put an OES schedule on for him — an optimum effective schedule — on the radio station. And Black folks showed up. And then he said, "I'm going to have to cancel my business." I said 'Why?' He said, "Well, my pilferage rate is higher." I said, 'Can you prove that?' [He responded] "No, but, I don't have enough people, and I have suspicious people coming in here. And I believe they're shoplifting."*[131]

Byron Lewis made the same point:

> *Sometimes, there's even the matter [of too many Blacks],... particularly if you get into the franchise business, and you get a disproportionate amount of Black traffic. There's some people who own stores—franchise outlets—who still don't want to advertise their market, because they'd rather spend their money on a broad basis, because they just don't like the traffic. So I think that there's still a*

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[128] *Compare*, David Hinckley, *Macy's ups black, Hispanic advertising*, New York Daily News, December 14, 1998, 1998 WL 21937063, (Macy's department store reported to have increased its advertising on black and Hispanic media by 50% in response to pressure from minority media advocates).

[129] Interview with Luis Alvarez, WSKQ and WPAT (Spanish Broadcasting System), page 2. *See also*, Mira Schwirtz, *Sharpton Leads Ethnic Media Demonstration Outside* Y&R, Mediaweek, June 22, 1998, 1998 WL 10320331.

[130] Survey of WBGE-FM. *See also*, interview with Ken Smikle page 10.

[131] Interview with Co-Owner of a station that has requested anonymity, pages 4-5.

subjective attitude or racial attitude that gets in the way of sound business practice which is one of the things that you encounter when you work the minority side of the marketing fence.[132]

More recently, the national rep firm, Katz, issued an apology for language contained in a memo alledgedly used to train its salesforce.[133] The memo contained several references to Blacks and Hispanics as "suspects" rather than "prospects."[134] Under the heading, "Keys to Success," the memo said:

Get buyers to understand that WABC is one of the most upscale select stations in New York. We must get the buying community to understand and appreciate the unique qualitative, personality and foreground profile of WABC. Advertisers should want prospects not suspects.[135]

The memo also said:

When it comes to delivering prospects not suspects, *the urban[-formatted stations] deliver the largest amount of listeners who turn out to be the least likely to purchase. Median age is 23. Very young and very, very, poor qualitative profile.*[136]

The phrase "prospects not suspects" has been criticized by minority broadcasters and community activists, including the Reverend Al Sharpton, as perpetuating the stereotype that minorities are responsible for thievery.[137]

Elsewhere, the memo says:

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[132] Interview with Byron Lewis, The Uniworld Group, page 18.

[133] The Katz Radio Group has five separate radio representation companies — Christal Radio, Eastman Radio, Katz Radio, Katz Hispanic Media and Sentry Radio. Collectively, these companies represent more than 2,000 radio stations in 270 markets. The memo was alleged to be by used by Katz sales staff on behalf of radio stations owned by Walt Disney/CapCities/ABC. Interview with Judith Ellis, Emmis Broadcasting, page 22.

[134] The full text of the memo ("Katz memo") and Katz statement of apology are on file with CFR.

[135] Katz memo, page 1 (emphasis added).

[136] *Id.*, at 12 (emphasis added).

[137] *See, Advertisers Show Bias by Tuning Out Black Radio,* Clarence Page, The Cincinnati Post, July 2, 1998 19A, 1998 WL 13550328.

> *The indices highlight the importance of effectively reaching New York's "white" population but the White population also accounts for almost 3/4's of each category. We have to drill this home that while the Black and Hispanic segments of the New York population are significant, they comprise very small portions of the upscale, educated and affluent [aged] 25- 54.*[138]

The memo also stressed that advertisers "can easily overbuy Black."[139] The memo argued that advertisements on urban stations reach less economically affluent young African-Americans, and that you can reach "upscale Blacks" through "non-ethnic stations."[140]

Other anecdotal evidence obtained by CRF expressed sentiments similar to that of the Katz memo. A sales presentation prepared by Sinclair Communications[141] was used in the New Orleans market to discourage advertisers from buying more than one, or "overbuying", urban radio stations. CRF requested permission to reproduce the full presentation for the purpose of dissemination with this study, however, permission was denied by Sinclair Communications.[142]

The Sinclair presentation sets forth various demographic data, including age and income, in an effort to show that Sinclair's audience would provide a more profitable market. However, Sinclair explicitly relies upon racial data noting:

"***BEWARE***

BY ALL MEANS, BUY ONE URBAN STATION FOR COVERAGE OF THE BLACK POPULATION....BUT DON'T SACRIFICE THE "ANGLO" POPULATION BY **OVERBUYING URBAN! 1 URBAN STATION WILL GIVE YOU THE BLACK "REACH" YOUR NEED!"**[143]

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[138] Katz memo, page 4.

[139] *Id.*

[140] *Id.*

[141] According to Barry Drake, Chief Operating Officer, Sinclair Communications, the presentation was prepared by Sinclair's national sales manager. Telephone interview with Barry Drake, November 20, 1998.

[142] Telephone interview with Barry Drake, Sinclair Communications, January 8, 1999, (presentation is on file with CRF).

[143] Capitals and emphasis in original.

The New Orleans metro market consists of several parishes (i.e. political subdivisions) and three urban radio stations— KMEZ-FM (owned by Sinclair),[144] and WQUE and WYLD (owned by Clear Channel Communications). The Sinclair presentation describes the "upscale population" in the New Orleans metro market as residing in five "non-ethnic" parishes. The presentation describes the listeners of its competitor's urban stations as residing mostly in the "Black" Orleans Parish: "The majority of WYLD's and WQUE's Adult 24-54 listeners are located within the Orleans Parish, which is a predominantly Black area with a low-income, downscale socioeconomic profile."

According to Sinclair, the presentation was intended to show that the Sinclair urban station, KMEZ, reached the economically affluent "money demo"—Black listeners aged 25 to 54. In contrast, WQUE was characterized as reaching mostly 12 to 34 year olds —"They have no money!" According to Sinclair, buying advertisements on more than one urban station in the New Orleans market would amount to duplicated reach among Black listeners. Buying advertisements on one urban station, (i.e. KMEZ), according to Sinclair, delivers the necessary reach with "NO ANGLO WASTE" (capitals in original).

According to the Regional Marketing Manager of WQUE and WYLD, advertisers usually purchase advertisements on the top five stations in a market when making national buys *despite the fact that this may result in duplicated audience reach.*[145] WQUE and WYLD are among the top five stations in the New Orleans market.[146] In his view, "racism can only explain why it is negative to buy more than one urban station, but positive to buy more than one general market station."[147] Mr. Wilson also said that it was "disingenuous" to promote KMEZ based upon a higher percentage of "upscale" age 25 - 54 listeners, because the audience of WQUE and WYLD is "four times the size of KMEZ."

The Sinclair presentation omits the fact that the Clear Channel urban formatted stations, WQUE-FM and WYLD-FM had average 1996 local commercial shares of 14.7 and 8.4, respectively. KMEZ's 1996 average local commercial share was 4.9.

In 1996, Sinclair Communications owned 26 radio stations nationally, including three general market and one urban formatted station (KMEZ) in the New Orleans market. One can thus surmise that urging advertisers not to "overbuy" urban stations (i.e. buying only KMEZ) would benefit Sinclair's general market stations.

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[144] Sinclair sold KMEZ-FM in 1998.

[145] Telephone interview with Ernest Wilson, Regional Market Manager, Clear Channel New Orleans, December 9, 1998.

[146] Ranked according to average 1996 local commercial shares, WQUE ranked first, WYLD ranked forth, and KMEZ (Sinclair's station) ranked ninth in the New Orleans metro market. *See,* BIA MasterAccess, August 1997 edition.

[147] Telephone interview with Ernest Wilson, note 145, *supra.*

According to Sinclair's Chief Operating Officer, the presentation was given to Allied Radio Partners, a subsidiary of The Interep Store, to encourage national advertisers to place advertisements on KMEZ.[148] Ironically, Sinclair's competitors, WQUE and WYLD, are represented by another Interep subsidiary, Clear Channel Radio Sales.[149]

Cautioning advertisers not to "sacrifice the 'Anglo' population by overbuying urban" echoes sentiments expressed in the Katz memo urging sales people to tell advertisers that the "white" population is of paramount importance:

> *If an advertiser is buying 100 grps [gross rating points - a measure of the station's audience reach] and is targeting professional/managers, they only need to buy [less] GRPS of Black exposure and [even less] GRPS of Hispanic exposure. Anything more would be overkill and would meant [sic] that effective frequency and schedules would not be placed against the more important "White" segment of the population.* [150]

ABC radio and its representatives had an incentive to direct business away from urban, Spanish and other minority formats to general market ad placements, because of the types of formats ABC stations used. Of the 28 stations ABC radio owned in 1997, only one could be classified as minority format; KMKY-AM in San Francisco, a rhythm and blues/oldies station which ABC bought in 1997. [151] Its other 27 stations programed to the general market specializing in formats including Children's, talk, and album-oriented rock.[152]

Both the Katz memo and the Sinclair presentation emphasized the "value" of the "White" population over Blacks and Hispanics. Though age and income were cited as reasons for directing ads away from minority-formatted broadcasters, the race and ethnicity of the audience also appeared to be a factor in the recommendation.[153]

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[148] Telephone interview with Barry Drake, November 20, 1998.

[149] BIA MasterAccess database, August 1997 edition.

[150] Katz memo, *supra* note 134, at 4.

[151] BIA MasterAccess database, 1998.

[152] *Id.*

[153] As noted above, under certain anti-discrimination statutes, it is sufficient to demonstrate that race is one factor leading to the challenged practice. Specifically, judicial cases interpreting the Fair Housing Act's prohibitions have recognized that discriminatory intent need only be one motivating factor for the conduct. *See, Village of Arlington Heights v. Metropolitan Housing Dev. Corp.*, 429 U.S. 252 (1977); *United States v. City of Parma*, 661 F.2d 562, 575 (6th Cir. 1981), *cert. denied*, 456 U.S. 926 (1982) ("There is no requirement that such intent be the sole basis of official action"). Rather, "[w]hether motivated by animus, paternalism, or economic

Both documents were designed to steer ad placements away from stations serving minority communities, reflecting the authors' economic interests in general market ad dollars.[154] Practices such as these carried out on a national scale appear to undermine the advertising performance of minority-formatted stations.

The Katz memo and the Sinclair presentation rely upon audience research data to support their assertions about the superior "value" of White consumers over Black and Hispanic consumers. Hence, the reliability of data supplied by audience research services is critical. Statements about audience

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considerations, intentional . . . discrimination is prohibited by the Act." *United States v. Scott,* 788 F. Supp. 1555, 1562 (D. Kan. 1992).

[154] Legal research should be conducted to analyze the extent to which these practices may violate public policy in the Communications Act of 1934, as amended, 47 U.S.C. §§151 *et seq.* For example: (1) Title I, Sec. 1 states that the Act's purpose is to regulate interstate commerce to ensure radio communications service is available "to all the people of the United States, without discrimination on the basis of race, color, religion, national origin, or sex..." To the extent that competitors are steering business away from a broadcaster based on the race or ethnicity of the station's audience, it may limit the availability of radio to minority communities because it undermines the financial viability of serving those communities. Arguably, this may constitute discrimination under the Communications Act, particularly if the caution not to buy time on minority-formatted stations is based on the audience's race, color or national origin; (2) Section 257 of the Act emphasized that the FCC shall carry out the national policy "favoring diversity of media voices, vigorous economic competition...and promotion of the public interest, convenience, and necessity." 47 U.S.C. 257 (b). Discouraging ad business on stations which serve the minority community decreases the incentives to provide such service, thereby potentially affecting diversity of media voices. It also appears to affect minority-formatted stations' ability to earn revenues, and their ability to raise capital. (*See* page 56 comments of Tom Castro asserting that advertising practices steer ads away from minority oriented stations, and harm minority broadcasters' ability to serve the public interest, compete, and raise capital to buy additional stations). The FCC is empowered to use other sections of the Communications Act of 1934, as amended, to remedy market entry barriers for small businesses and entrepreneurs identified through a Section 257 analysis. 47 U.S.C. 257(a); and (3) Sections 307(c)(1) and 310(k)(1)(A) of the Act require that the FCC take into account whether the licensee is operating in the public interest as a consideration in license renewal.

Other statutes and public policies may also apply to the extent that characterizations about a broadcaster or its audience are unfair, false, misleading or misrepresentations of fact. For example, Section 5(a)(1) of the Federal Trade Commission Act states that "Unfair methods of competition in or affecting commerce...are hereby declared unlawful." 15 U.S.C. § 45(a)(1). The Lanham Act prohibits false or misleading descriptions of fact, or misrepresentations of fact, by any person in connection with any goods or services, that may cause confusion or deceive regarding the goods or services of another person. 15 U.S.C. § 1125 (a)(1).

characteristics are usually based upon "qualitative" studies of listeners developed by audience research services—some of which are accredited and some of which are not.

The broadcast industry, Congress and the FCC have long recognized the importance of accuracy in audience research services.[155] The Media Ratings Council (MRC) is an industry-sponsored organization that promotes audience research services that are valid, reliable and effective.[156] Services that have disclosed their methodologies to the Media Ratings Council are subjected to its review process which includes an extensive procedural audit. Fourteen services are currently accredited by MRC as meeting its standards (*see,* Appendix F).

Questions have been raised concerning the ascription methodologies employed by some audience research services.[157] Ascription involves using answers from completed surveys to supply answers for incomplete survey instruments. Ascription has been approved by MRC in certain instances. However, concern has been raised about the ascription of entire survey instruments— not just a few missing answers.[158]

While the accuracy of the data upon which the Katz memo and Sinclair presentation are based has not been specifically called into question, their comparisons of the "qualitative profile"of general market and minority-format station listeners underscores the importance of reliable ratings and qualitative data. In short, assessments of an audience's qualitative profile may not be accurate, if the methodology upon which those conclusions were drawn is flawed.

In summary, a variety of factors may contribute to "dictates" and "minority discounts." Negative views about the minority consumer and concerns about product image, in certain instances, appear to outweigh economic justifications for targeting minority consumers. As the next section demonstrates, some advertisers are adjusting their media buying practices as the minority population continues to expand. The ability of minority-owned media to take advantage of these new developments in the marketplace, however, has not been demonstrated.

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[155] A 1966 Congressional oversight committee concluded: "The purchase and use by broadcasters of rating surveys importantly affect the performance of broadcasters in two respects, first, in relation to listeners and viewers, and second, in their competitive relations to each other. The FCC has vital responsibilities with regard to both these aspects." House Comm. on Interstate and Foreign Commerce, Broadcast Ratings, H.R. NO.1212, 89TH CONG., 2D SESS., AT 11 (1966) (*see* Appendix G).

[156] Board members of the Council represent blue-chip radio and television broadcasters, cablecasters, print organizations, advertising agencies and industry trade associations (see Appendix F).

[157] Interview with Bob Jordan, President of International Demographics Inc., which prepares The Media Audit, a rating service, page 6. *See also*, Appendix I for a fuller analysis of audience research methods.

[158] *Id.*

4. Current Marketplace Developments.

Despite the challenges, most media executives interviewed acknowledged that trends are improving. The fact that the 1996 earned income of African-Americans—estimated to be $367 billion—constituted the fifteenth largest economy in the world,[159] has encouraged some advertisers to reevaluate their marketing strategies. Similarly, Hispanic purchasing power in 1997 was estimated at $266.5 billion—a 7.7 percent increase over 1996.[160] As Byron Lewis puts it, "Now it's all numbers driven."

> *[D]espite the fact that African-Americans have a lower median income than say the Hispanic population, the Asian population and the general market, we have a higher annual purchasing power. And the purchases that we make reflect our desire to buy products that have imparted prestige and status associations. So we're probably 34 - 35 million people in the country. But we have an annual income over $400 billion which makes us 7th or 8th largest consumer nation in the world. In other words, we actually have more purchasing power than many other European countries (Spain, places like that). The truth is, the Black preference for buying things that have the badge of prestige makes us a valued customer. That you see across all product lines. Now, that phenomena is what the clients begin to pay attention to.*[161]

Evidence that advertisers are interested in the Black and Hispanic markets can be found in the increasing amount of advertising expenditures targeted to these market segments. 1997 advertisements in all media targeted to Hispanics totaled $1.4 billion dollars—up 17% from 1996.[162] 1997 targeted advertising to African-Americans totaled over $1 billion.[163]

While these developments are encouraging, they have not served to close the gap between marketing expenditures on minority-formatted versus general market radio stations. In several Arbitron markets the market share of listeners for Black and Spanish stations has increased. Their share of the advertising revenues, however, lags far behind that of general market stations. One minority radio station owner commented:

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[159] The 1997 Report on The Buying Power of Black America, Target Market News Inc., pages 13 and 14.

[160] *Strong Economy Buoys Purchasing Power*, Hispanic Business, December 1997, page 58. Estimates are based upon U.S. Census data regarding per capita income.

[161] Lewis at page 7. *See also* Interview with Sherman Kizart, The Interep Radio Store, page 5.

[162] *Strong Economy Buoys Purchasing Power*, Hispanic Business, December 1997, page 60.

[163] Target Market News, Dollars Spent Advertising to Black Consumers, Target Market New web site: http:\\www.targetmarketnews.com, accessed September 1998.

> *Now, in many markets, large and small, from LA and NY to the Rio Grade Valley and Mobile, minority targeted radio stations are rating leaders. There is demographic change and Arbitron is slowly documenting this. But the ad dollars haven't been reallocated yet. The large, established non-minority owned stations are getting an unfair share of the revenue. And, they are fighting like hell to hold onto the revenue allocation that represents the past. Now they'll say to the ad agencies, "look at my oldies station, it has a 20% Hispanic audience. You don't need to buy a minority formatted station." There is a show down coming. All we ask is that economic rationality be employed. Green is green, not black, brown or yellow.*[164]

Consistent with Tom Castro's claim that general market stations are attempting to discourage buys on minority-targeted stations, the Katz memo exemplifies a strategy to gain revenues that would otherwise flow to minority-targeted stations. According to the Katz memo, minorities can be adequately reached through ABC/Disney and other general market outlets, thus reducing the need to buy minority-targeted radio.

> *A 12x schedule on WQCD, WLTW, WTNS, WABC, WPLJ, WKTU, and WCBS-FM delivers 93.6 Black [ages] 25-54 rating points.* Don't even need to use an ethnic station. *These same stations deliver 82.8 Hispanic [ages] 25-54 rating points with a 12x schedule. Get all of the ethnic ratings you need by not using an ethnic station. Drill this home. Buyers are not aware of this.*[165]

Tom Castro explains that one consequence of such strategies is that highly-skilled minority sales professionals who were trained at minority-owned stations are hired for higher salaries at general market stations. More importantly, Castro says that the loss of commercial buys results in lower profits for minority entrepreneurs which increases the difficulty of leveraging a minority-formatted station to acquire additional stations in order to enjoy the benefits of competition as a multiple station owner. With respect to the public interest, Mr. Castro points out that the programming quality of minority-owned stations can decline due to lessened profitability and they become less competitive in the marketplace. Hence, there is a vicious cycle of events that leads to the decline of minority-formatted and minority-owned radio.[166]

The same view was echoed by Roman Pineda, President of the Hispanic division (Caballero Spanish Media) of the Interep Radio Store. He notes that industry leaders have paid attention to the fact that Spanish radio is top rated in several markets, reflecting the growing minority population (see Chart E regarding Hispanic and minority population and projected population trends, page 64). He believes that the problem lies with smaller advertisers that have not invested in systems for evaluating their investment in minority-targeted advertising.

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[164] Telephone Interview with Tom Castro, El Dorado Communications, December 17, 1998.

[165] Katz memo, page 4 (emphasis added.) 25-54 rating point refers to the ability to reach audiences between the ages of 25-54.

[166] Interview with Tom Castro, El Dorado Communications, page 6.

The reason why you have all of these Fortune 500 Companies advertising in the market is because it's already easier for them to track the benefits of advertising to Hispanics. They have the systems in place. They do see a market. And trust me, Proctor and Gamble could care less what language you speak as long as you buy their diapers. AT&T is aware of the fact that the vast majority of the long distance consumers in this market in the United States are Hispanics because they can tell: "Oh, here's a list of Hispanics' earnings. This is how much they spend a month on long distance." It's a very black & white equation. You can't accuse AT&T of discriminating against Hispanics. So when you take a look at the knowledge and the needs, most of the smaller companies, the smaller entities that don't have the resources, don't have the financial background, are not really marketing savvy, those are the ones that "may be discriminating against Hispanics" because they haven't done their homework.[167]

With respect to the $1.4 billion dollars spent on Hispanic marketing, Mr. Pineda notes that this figure represents only 1% of the amount of general market advertising expenditures. Hispanics, on the other hand, represent approximately 10% of the population.[168] One reason that more advertisers have not allocated additional funds to the targeted market is because the same tools (*e.g.* tracking systems) used to justify general market expenditures are not available for targeted expenditures.

In the general market, I think there are more tools, more quantitative and more qualitative tools that enable them to make a decision. And if you're a brand manager, and you're paid on profits, and you're responsible for developing a plan that's going to move X amount of cases. Are you going to venture into an unknown territory where you can't track sales and you don't know all of the information? Or are you going to go to a safe territory like the general market that gives you exact information week-by-week of your movement that you can look good to your boss? It's the "Cover Your Ass Syndrome."[169]

As the General Manager and Senior Vice President for two general market and one urban market station located in New York, Judith Ellis of Emmis Broadcasting is in a position to compare sales by her various stations. The Black-targeted station, WRKS-FM, has the largest listenership of the three, yet it fails to perform as well in terms of cost per point paid by general market advertisers. When asked why WRKS cannot obtain the same rates as the other non-ethnic stations, Ms. Ellis responded:

Because it's black. The Black consumer is less valued than the White consumer and therefore they're going to pay less for Black consumers.[170]

On the other hand, Ms. Ellis indicated that there are companies that aggressively seek out minority-targeted outlets. Buys from these advertisers are obtained through ad agencies that handle

[167] Interview with Roman Pineda, Caballero Spanish Media, pages 6-7.

[168] *See id.* at 12. *See also* interview with Tom Castro, El Dorado Communications, page 17.

[169] Interview with Roman Pineda, Caballero Spanish Media, page 10.

[170] Interview with Judith Ellis, Emmis Broadcasting, page 17.

minority buys exclusively. In these instances, WKRS gets rates that are comparable to general market buys. However, she noted that some buyers that handle a broad variety of products will only buy ads on WKRS for products that are traditionally viewed as Black consumer items:

Ellis: *Yes. There are some agencies that are buying just Black media. And there are other agencies that are general market buys and with those agencies we have a harder time getting the rates we deserve.*
....

Ofori: *So now, what kind of advertiser are you struggling to get into the door with? Those that do not have a targeted campaign? What are the examples of those kinds?*

Ellis: *Continental Airlines, Aruba Tourism, Staples are some that come to mind. Wamsutta, American Airlines, SAAB.*

Ofori: *And these are companies that you try to do business with and found it difficult to do it?*

Ellis: *Yeah. We've given unbelievable presentations to Chock Full O' Nuts Coffee, Folanari wine, where we've given proposals that are good; that we really had information here. And you just can't get anything accomplished. Merrill Lynch. Oh, Cadillac doesn't buy us. Intel, Dial-A-Mattress. We have one buying service that'll only buy us for fried chicken. They will only buy us for fried chicken and they were mad when I called them racist.*[171]

An article by Radio Business Report (RBR), entitled *NEDs & NUDs are duds, but they're reality* (June 1, 1998) listed several companies reported by its sources to have "no Urban" or "no Spanish" dictates. Advertisers reported in the article as "handing down dictates not to advertise on Urban...radio" include: Armour All, Aruba Tourism, Astoria Bank, Buick, Cadillac, Continental Airlines, Discovery Channel, Jos. A. Banks Clothier, The Learning Channel, NYX Science Center, Starbucks Coffee, Trans World Airlines and Volvo. Advertisers reported to have "dictates not to advertise on... Hispanic radio" include: Baskin-Robins, CompUSA, IKEA, Macy's, New Jersey State Lottery, Paramount Studios, Sony Pictures, Starbucks Coffee, and Universal Studios.

To the extent that such dictates are based on the race, ethnicity or national origin of a station's audience, or exclude a station from consideration based in part on those factors, one could argue they are contrary to public policy and to the public interest mandate of Section 1 of the Communications Act, as amended, 47 U.S.C. §151. In addition, to the extent that any of these advertisers are covered by certain anti-discrimination statutes such as Title II of the Civil Rights Act of 1964, 42 U.S.C. §2000a, or the Fair Housing Act, 42 U.S.C. §§3604 et seq., advertisers who practice minority dictates may be

[171] *Id.*, pages 18-19.

engaging in practices which violate these statutes.[172] To the extent businesses receive federal funds, they are also subject to the nondiscrimination provisions of Title VI of the Civil Rights Act of 1964, 42 U.S.C. §2000(d). Legal research should be conducted on the potential applicability of these statutes and case law to companies which engage in "no Urban/Spanish dictates."

Byron Lewis, Chairman of The UniWorld Group, in commenting on the role of his ad agency, confirmed the point that minority-owned agencies are primarily engaged with promoting the minority market:

> *[E]ssentially I'm interested in reaching a station that reaches Black audiences. In some cases it's a White-owned station. Like KISS in New York City. And that becomes just a matter of the channel. You got to use a channel that gets you the numbers against the Black audiences. No I wouldn't use a White, suburban station with predominantly White males, because I don't have an assignment that is interested in reaching White males. The mainstream agency has the responsibility and the budget to reach that segment.*[173]

And despite statistics that show increasing consumption by Blacks, buys for such markets are discounted due to a general negative perception of the market:

> *The mainstream advertising agencies have a perception that the White customer is more valuable than the Black or minority customer because of the things we mentioned. The perception is because the White*

[172] As noted above, the Fair Housing Act prohibits advertising which indicates a preference on the basis of race, color, national origin religion, sex, handicap, or familial status. *See,* 42 U.S.C. §3604(c). Thus, if a real estate agency were to adopt a "no Urban/Spanish dictate," this might violate the Fair Housing Act. Similarly, Title II of the Civil Rights Act of 1964 prohibits discrimination on the basis of race, color ethnicity or national origin in places of public accommodation. 42 U.S.C. §2000a. Public accommodations include "any restaurant cafeteria, lunchroom, lunch counter, soda fountain, or other facility principally engaged in selling food for consumption on the premises, including, but not limited to, any such facility located on the premises of any retail establishment." 42 U.S.C. §2000 (a)(b)(2). One could argue that a Starbucks coffee house is the 1990's equivalent of the soda fountain. To the extent that Starbucks or similarly situated businesses may have used "no Urban/Spanish dictates" to exclude stations from consideration for advertisements based in part on the race, ethnicity or national origin of the audience, it may be argued that this constitutes an attempt to avoid patronage by minority customers in violation of Title II. Although Title II does not include a specific provision prohibiting discrimination in advertising as does the Fair Housing Act, it is possible that evidence of "dictates" could form part of the evidence showing a violation of Title II. Note, in the wake of the Katz memo it was reported that Starbucks was engaged in discussions regarding advertising on a minority-formatted station. *See, Radio Waves, Tuned to B.I.A.S, Minority Stations Shunned by Advertisers,* Newsday, September 7, 1998.

[173] Interview with Byron Lewis , The UniWorld Group, page 11.

median income is higher, higher number of people in the professions....In other words, they ask for higher rates because they're reaching White customers who the advertiser feels for a variety of reasons is a more valuable customer. And if there are any Blacks thrown in there that's a bonus. But that's not the issue. Now when the Black station on the other hand comes with its numbers and it tries to get equal rates, there's the perception by certain advertisers that the customer is not necessarily in numbers or in quality equal to the White customer and, therefore, there's a difference in the rates that the stations can achieve. Now, all media is subject to negotiation. And I just don't feel the Black stations have in most cases the same leverage in order to maintain the rate that they ask.[174]

Although new developments in the marketplace favor minority-targeted advertising, some conditions have remained the same. Factors such as product image and misperceptions about the consumer potential of minorities constitute barriers that prevent minority media from closing the gap between audience share and advertising revenues. Stereotypes and the desire to target White consumers also play a role in lower advertising revenues for minority oriented stations. Mr. Lewis said:

Lewis: You don't advertise to them[minorities]. Let me put it more succinctly. The truth about it is, I've been told that the—let's just take the Caribbean—Blacks are going to come anyway. We don't turn anyone away. But in the Wintertime, the people we want to reach are the upscale, European, Canadian, American, White travelers. They come in the Wintertime. Now, Blacks come too. But you almost have no advertising welcoming Blacks during that period. That is a stated reason for not advertising to Blacks. That's our core audience. Blacks will come anyway. But underneath it, we don't want to create an imbalance.

Ofori: Are there any other product categories or services that exemplify what you have said ?

Lewis: No one will ever say that to you publicly.[175]

C. Black and Hispanic Consumer Spending Patterns - Now and the Future

Data on the racial/ethnic distribution of family income tend to reinforce the generally held perception that Hispanics and Blacks have less disposable income. Chart B contains data on median family income according to race and ethnic group. The chart shows that, based upon national averages, Blacks and Hispanics are less economically affluent than Whites and Asians/Pacific Islanders. Disparities in family income reinforce the perception that Blacks and Hispanics have less disposable income for goods and products promoted by the electronic media. Such data is often used to justify

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[174] *Id.*, pages 15-16.

[175] *Id.*, at 15-16.

> *median income is higher, higher number of people in the professions....In other words, they ask for higher rates because they're reaching White customers who the advertiser feels for a variety of reasons is a more valuable customer. And if there are any Blacks thrown in there that's a bonus. But that's not the issue. Now when the Black station on the other hand comes with its numbers and it tries to get equal rates, there's the perception by certain advertisers that the customer is not necessarily in numbers or in quality equal to the White customer and, therefore, there's a difference in the rates that the stations can achieve. Now, all media is subject to negotiation. And I just don't feel the Black stations have in most cases the same leverage in order to maintain the rate that they ask.*[174]

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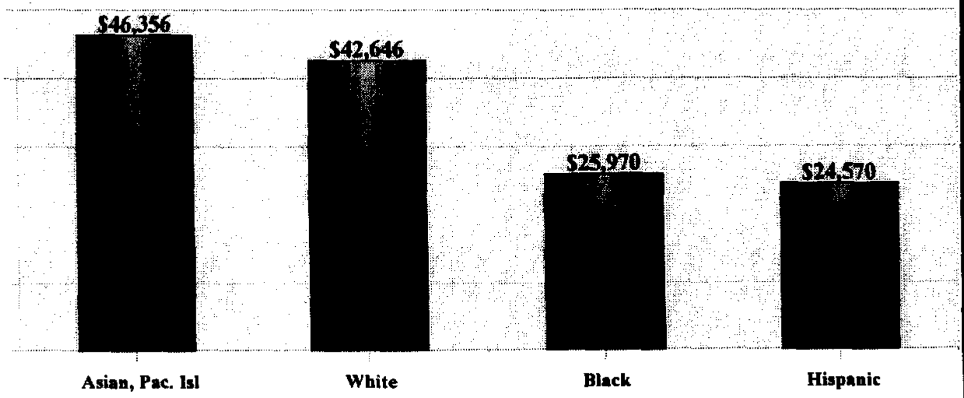
[174] *Id.*, pages 15-16.

[175] *Id.*, at 15-16.

business decisions not to buy advertisements on stations that have high levels of Black and Hispanic listeners.[176]

Chart B
Median Family Income by Race/Ethnic Group - 1995



Data: U.S. Bureau of Census, Current Population Reports, P60-197, *Money Income in the United States*: 1996, Table 724.

However, the economic status of minorities is improving. In 1996, median family income for Blacks increased 14 percent.[177] Other trends mitigate the significance of family income disparities in analyses of consumer data: 1) minority expenditures in certain consumer categories exceed that of the average consumer; 2) the total magnitude of Black and Hispanic earnings places each community among the top 20 economies of the world; and 3) Blacks and Hispanics will become increasingly important to the economy as their proportion of the domestic population grows during the first half of the next century.

Estimated household earnings for Blacks and Hispanics in 1996 were $367 billion and $280 billion respectively (Chart C). As noted, the U.S. Black market and the U.S. Hispanic market each have spending power that would rank them, standing alone, among the top 20 economies of the world.[178]

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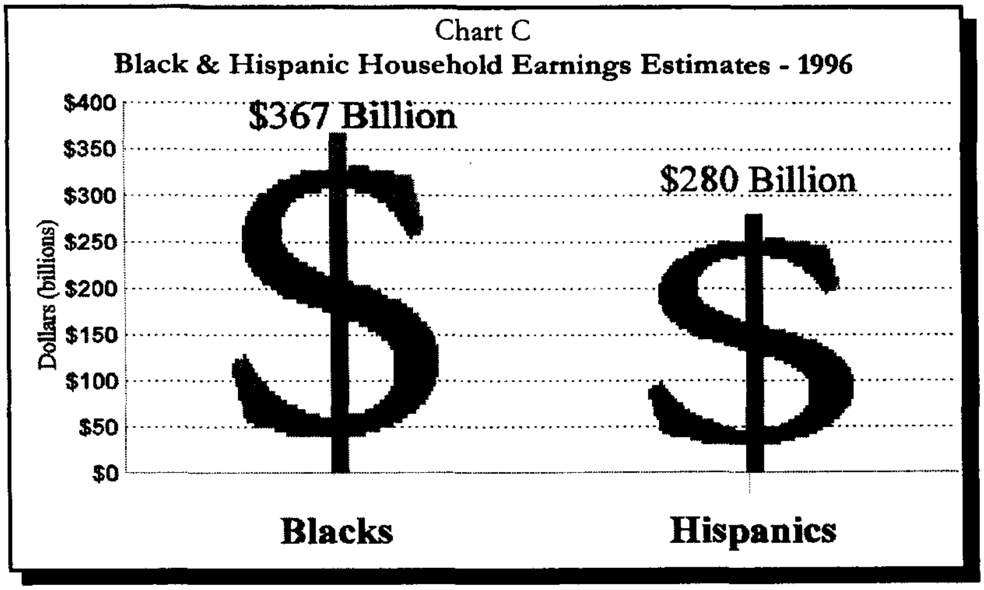
[176] *See,* page 70.

[177] ECONOMIC & STATISTICS ADMINISTRATION, U.S. CENSUS BUREAU, NEWS RELEASE - CB98-127, JULY 30, 1998.

[178] Target Market News Inc., The Buying Power of Black America (1997), page 14.



Data: Target Market News Inc., www.targetmarketnews.com/ web site accessed 9/12/98. The Arbitron Company, *Hispanic Radio Today* (1997) at 2.

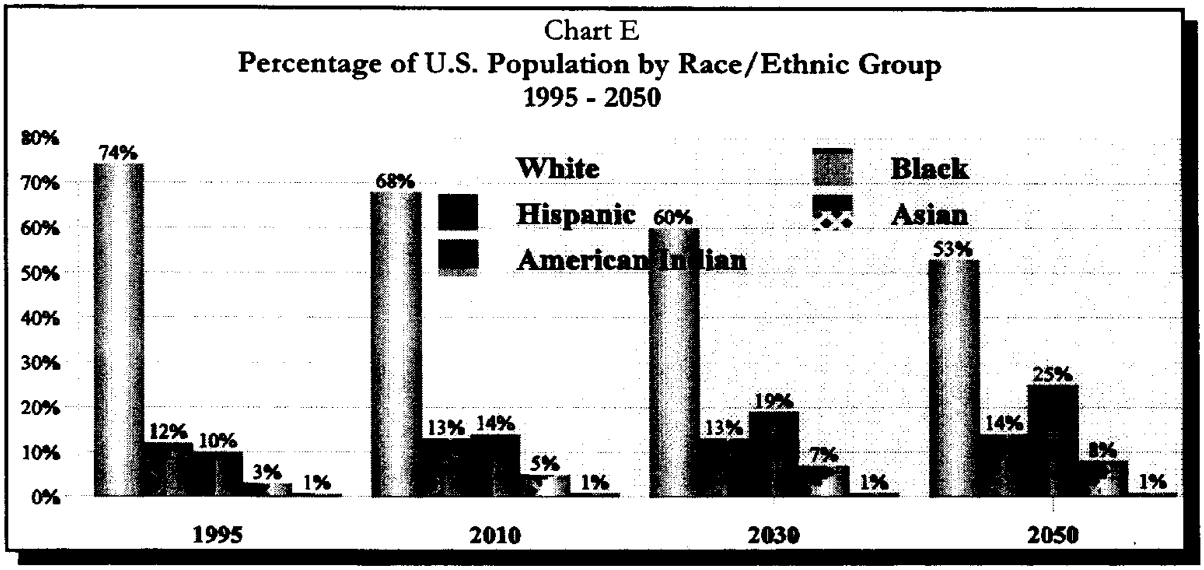
With regard to specific products and services, U.S. Census data show that Blacks outspend the average consumer in several categories: telephone service, utilities, apparel, major appliances, and certain categories of groceries. For *new* cars and trucks, Blacks spend slightly less than the average consumer (Chart D).

Chart D
Average Annual Black Household Expenditures -1995

	Blacks	All Consumers
Meat, Poutry, Eggs, Fish	$866	$752
Telephone	$781	$708
General Utilities	$2,206	$2,193
Apparel	$1,765	$1,704
Major Appliances	$170	$155
New Cars & Trucks	$927	$1,194

Data: U.S. Census Bureau, *Statistical Abstract of the United States*, 1997 edition, Table 712.

By the middle of the next century there will be significant shifts in the racial/ethnic composition of the U.S. population. By the year 2010, for example, the size of the Hispanic population is projected to exceed that of Blacks and become, for the first time, the country's second largest racial/ethnic group. By the middle of the next century, Blacks will number 61 million—double their 1995 size. The proportion of Non-Hispanic Whites, on the other hand, will decline from 74% in 1995 to 53% in the year 2050. Beginning in 2030, Non-Hispanic Whites will not add to the nation's population growth because they are expected to decline in absolute numbers (Chart E).



Data: Economics & Statistics Administration, U.S. Bureau of Census, Population Projections of the United States, (1996), Table J.

The Hispanic and Black populations are also significant in the country's largest cities. Hispanics and Blacks combined constituted 18- 57 percent of the population in 14 of the top 19 Arbitron markets. Chart F depicts the the size of the Hispanic and Black population and the Effective Buying Income (EBI)[179] of the total population in each of these markets.

[179] Effective Buying Income ("EBI") is after-tax disposable income. EBI data cited in BIA MasterAccess are obtained from the *Demographics USA County Edition* published by Market Statistics Bill Communications.

Chart F

EBI for Total Population and % Minority Population

	EBI 1996 ($millions)	% Black Pop.	% Hispanic Pop.	% Blk. & Hisp. Pop
New York	$317,544	22.2%	18.0%	40.2%
Los Angeles	$178,501	9.4%	39.5%	48.9%
Chicago, IL	$154,638	19.4%	12.6%	32.0%
San Francisco	$125,735	9.2%	17.0%	26.2%
Philadelphia	$90,941	19.9%	4.1%	24.0%
Dallas - Ft. Worth	$81,964	14.2%	15.3%	29.5%
Washington, D.C.	$90,768	27.2%	6.8%	34.0%
Houston-Galvesto	$73,514	18.3%	23.2%	41.5%
Miami-Ft. Lauderd	$55,510	20.2%	36.8%	57.0%
Atlanta, GA	$51,321	25.7%	2.3%	28.0%
San Diego	$40,914	7.2%	23.6%	30.8%
Phoenix, AZ	$40,156	3.6%	17.2%	20.8%
St. Louis	$43,015	17.2%	1.2%	18.4%
Baltimore, MD	$41,391	26.0%	1.5%	27.5%

Data: BIA MasterAccess, August 1997 edition.

Poised to capitalize upon these developments are some of the leading advertisers and large group-owned broadcasters. While misperceptions about Hispanic and Black consumers may persist in some quarters, many Fortune 500 companies are devoting greater portions of their advertising budgets to these markets. During 1997, targeted advertising was estimated to be $1.4 billion dollars for Hispanics and over a billion dollars for Blacks.[180] For Hispanics this represents a 17 percent increase over 1996. Ethnic targeted advertising is increasing, yet it still represents less than 2% of the $173.2 billion[181] in total media expenditures projected for 1998—substantially less than the representation of Hispanics and Blacks in the population.[182]

Contemporaneous with increased advertiser interest in the Hispanic and Black communities, large majority broadcasters are venturing into Spanish and urban formats. At the time of this writing, Clear Channel, a majority-owned, publicly traded corporation, owns 21 stations that air urban programming. In the Spanish format, the largest chain is Heftel Broadcasting—a majority-owned, publicly traded broadcaster that owns 39 Spanish-formatted stations. Heftel reported an 18% increase

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[180] Zate, *Opening the Big Wallets*, Hispanic Business (December 1997) at 60; Target Market News, *Dollars Spent Advertising to Black Consumers.*

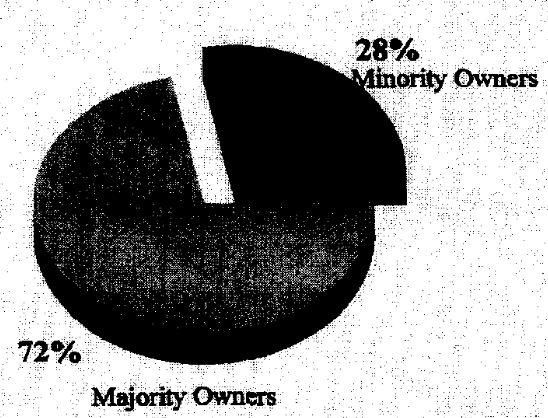
[181] U.S. Census Bureau, *Statistical Abstract of the United States*, 1997 edition, Table 916.

[182] In 1995, people of Hispanic origin (of all races) constituted 10.2 % of the American population. Blacks of non-Hispanic origin constituted 12% of the population. Economics & Statistics Administration, U.S. Bureau of Census, Population Projections of the United States (1996), Table J.

in revenues based upon "sales and marketing efforts to take advantage of advertisers' increasing awareness of the importance of the U.S. Hispanic market."[183]

Minority broadcasters, on the other hand, own a small percentage of the minority-formatted stations. Less than one-third of the stations that target minority audiences are owned by minority broadcasters (Chart G). Minority-formatted, majority-owned companies reporting financial revenue performance data to BIA in 1997 owned 297 stations, compared to 116 such stations owned by minorities (see Table 2, page 79).

Chart G
Minority-formatted Stations by Ethnic/Racial Ownership



Data: BIA MasterAccess, August 1997

In summary, larger targeted marketing budgets signify increased advertiser awareness of the Hispanic and urban markets. At the same time, majority broadcasters appear to be better positioned than minority broadcasters to capitalize upon targeted marketing expenditures. Although perceptions about the value of the Hispanic and Black consumer may have improved, majority broadcasters appear to be enjoying the lion's share of the financial benefits from this growing market.

C. Quantitative Analysis

The previous section identified several factors that influence ad agencies and advertisers to engage in practices that adversely affect the revenue generating ability of stations that air programming targeted to minority listeners. They were:

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[183] Heftel Broadcasting Company, 1997 Annual Report at 1.

- racial/ethnic minority consumers are stereotyped as unlikely buyers of certain luxury products or services;
- stations that program to minority listeners are excluded based on average listener income, regardless of data about consumption patterns;
- the desire to disassociate a company's image from minority consumers;
- language barriers, in the case of Hispanic consumers;
- unfounded fears that minority consumers pilfer;
- media buyers' unfamiliarity with the consumer habits of minorities;
- efforts by broadcasters and their national sales representatives to discourage advertisements on minority-formatted stations; and
- belief that minorities can be reached through the general media.[184]

This section examines quantitative data to determine whether nationwide radio industry data are consistent with the anecdotal findings. Several independent variables were examined in terms of their impact on advertising performance. Section C-1 examines the relationship between audience demographics and program format. Advertising performance disparities related to program format, minority ownership and ownership size are examined in Section C-2. The effects of ownership size are again examined in Section C-3. Section C-4 discusses advertising practices in the context of local market consolidation and access to capital. Throughout these sections, two dependent variables are employed to measure advertising performance: average station revenues and the power ratio.[185]

As fully explained in the methodology (Section I-C), the following sections rely upon two different data sets. In order to analyze program format and audience demographics, qualitative data on radio audiences were paired with station performance data.[186] Hence, Section C-1 relies upon a merged data set consisting of 1,533 radio stations, including 98 minority-owned stations and a total of 212 minority-formatted stations. Most of the stations in this data set are in the top 100 markets.[187]

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[184] Additional factors, such as the failure to obtain data about minority consumer behavior (*e.g.* tracking systems) and lack of ethnic diversity in the workplace, were also cited as reasons for not advertising to minorities.

[185] Average station revenues are based upon station gross revenues. The power ratio is a measure of a station's ability to convert its share of the listening audience into share of market revenue. The higher the ratio the more efficient the station's performance in this regard (*See* Glossary, Appendix K).

[186] Audience demographic data was obtained from the Spring 1997 edition of The Media Audit prepared by International Demographics, Inc.. Station revenue and market data was obtained from the August 1997 edition of BIA MasterAccess, prepared by BIA Research Inc.

[187] The distribution of the merged data set averaged 22 stations per market for 64 markets in the top 100 markets. An average of 14.3 stations was obtained per market for 8 markets in markets above 100. Appendix D contains a frequency distribution table for the number of stations per market included in the data set.

The analyses in Sections II- C-2 and II-C-3 did not require pairing data from separate databases. A data set consisting of 3,745 stations was used for these sections.[188]

These analyses suggest that minority-formatted programming is one of several factors that affect station advertising performance. Other variables that may affect advertising performance include audience income, audience ethnic/racial composition, minority ownership, market rank, and ownership size. As simple data comparisons, however, these analyses do not constitute conclusions about the causal relationship between the independent and dependent variables. They are merely presented as preliminary findings concerning the extent to which nationwide data are consistent with the anecdotal findings. The analyses are also intended to highlight areas for subsequent research.

1. The Relationship between Audience Demographics and Program Format

In order to gain a better understanding about the relationship between audience demographics and program format, CRF compared the audience characteristics of minority and general market formats. The analysis was undertaken because of the important role that program format plays in target marketing (see Overview of Media Buying, Appendix A) and the desire to compare the success of formats based upon their associated audiences.

Five categories of programming format were used for the analysis: black, Spanish, ethnic, urban and general market. The first four are targeted to minority listeners.[189] The fifth format, general market,[190] is aimed at a broader range of listeners.

As an initial step, the analysis sought to establish whether there are any discernable differences between the audience demographics of general market and minority-formatted stations. These formats were examined in terms of average household income and percentage of minority listeners.[191] Minorities, for the purpose of the analysis, included the primary categories of racial and ethnic minorities recognized by the U.S. Census (Asian/Pacific Islanders, African-American, Hispanic, Native-American and Pacific Islanders). Chart H shows that stations that air programming with minority-

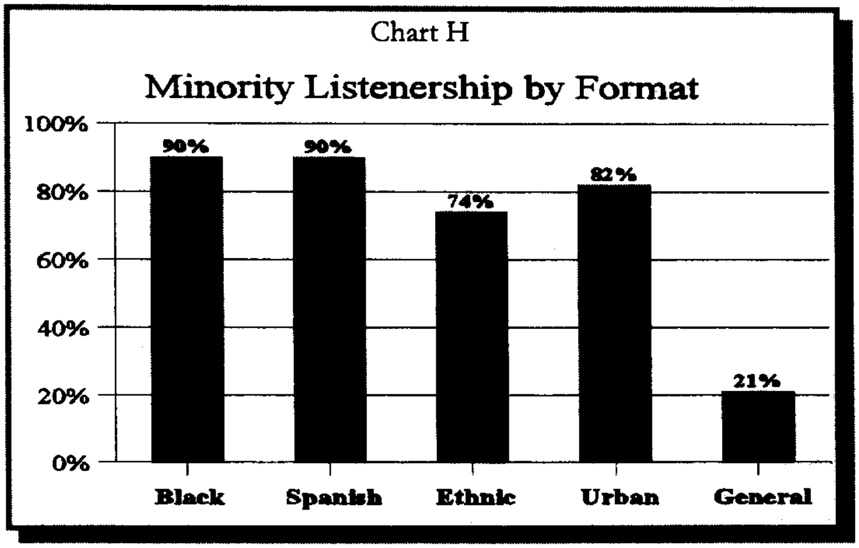
[188] Stations were drawn from the August 1997 edition of the BIA MasterAccess database based upon the following program query: "select stations with a power ratio greater than zero," indicating that revenue and listener data were reported.

[189] The five programming formats used for this study are based upon format categories employed by BIA Research Inc. (*see also* Appendix K). Some formats include several subcategories of programming. Urban, for example, includes rhythm and blues, urban adult contemporary, urban gospel, and urban rap.

[190] For the purpose of this analysis, general market format stations are all stations with formats other than the urban, ethnic, Spanish, or black.

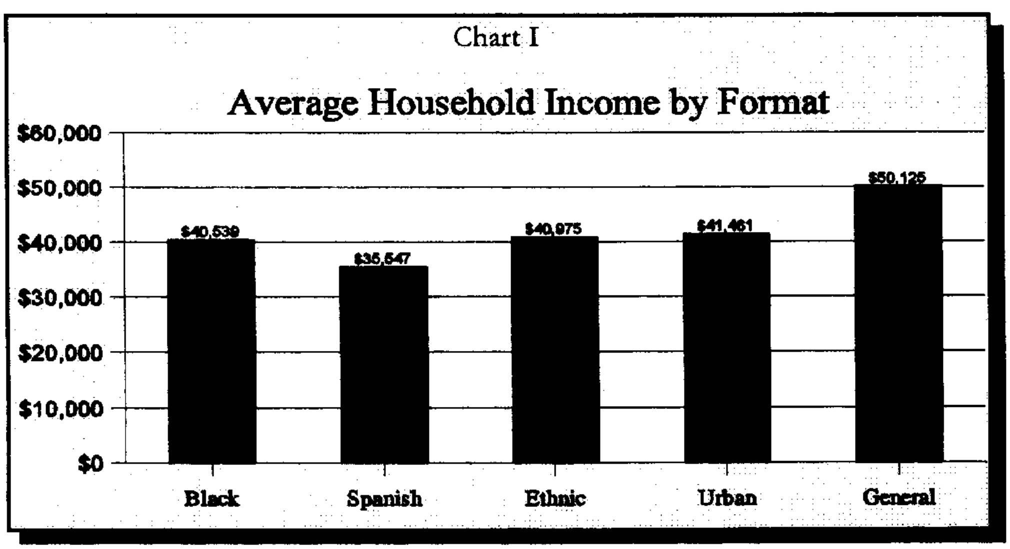
[191] Demographic data was obtained from The Media Audit (Spring 1997), prepared by International Demographics, Inc.

oriented formats have the highest levels of minority listeners: black (90% minority listeners), Spanish (90% minority listeners), ethnic (74% minority listeners), and urban (82% minority listeners). By contrast, stations that air general market programming had 21% minority listenership.



Data: August 1997 edition of BIA MasterAccess

Formats with high levels of minority listeners (black, Spanish, ethnic and urban) also had average household incomes that were lower than the general market format. Income levels ranged from $35,547 for Spanish to $41,461 for urban. The average audience household income for stations that air general market programming was $50,125 (see Chart I).



Data: August
1997 edition of BIA MasterAccess

Charts H and I support the generally held understanding that there is a discernable difference between the audience demographics of minority-formatted and general market stations. First, the data indicate that racial/ethnic minorities comprise a substantial portion of the listening audience of minority-formatted stations. Second, the household income of minority-formatted station listeners averages about $10,000 to $15,000 less than the income of general market station listeners.

To the extent that advertisers take audience demographics into consideration, the audience characteristics that differentiate minority formats from general market formats are likely to have a substantial bearing on media buy decisions. For example, a product that is targeted to consumers with high disposable incomes is more likely to be advertised on a station with general market programming.[192] To the extent that market research determines that the race or ethnic background of a consumer influences product demand, advertising decisions may be swayed by the racial or ethnic identity of a format's listeners.

Advertisers were reported to place a lower value on minority consumers due to stereotypical perceptions of disposable income, the likelihood of pilferage, image control, etc. (*see* Section II-B-2). The next section presents data concerning the advertising performance of program formats that appear to support the claims of the anecdotal informants. However, these findings could also be explained by justifiable business decisions to target audiences with higher incomes (*i.e.* market research justifies targeting consumers who have higher incomes and listen to general market stations).

Future research should control for audience income and other variables in order to determine the *extent* to which "buys" are placed on general market stations, despite the fact that consumers who are predisposed to purchase the product could have been approached via minority-formatted stations. The findings discussed in the next section should not be considered conclusive. They are presented only as preliminary results that support the anecdotal findings. As such, they may be confirmed or disproved in subsequent research.

2. Disparities in Advertising Performance in Terms of Program Format and Minority Ownership

This section examines the relationship between program format, minority ownership and advertising performance. This analysis is based upon a universe of 3,745 radio stations reporting revenue and listener information in the August 1997 edition of the BIA MasterAccess. The data set includes 155 stations owned by minorities and a total of 413 stations that air programming that is minority-formatted.[193] The results of the analysis are summarized in Table 2, (page 79).

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[192] Note the discussion in Section II-B-3 concerning the unreliability of using household income as a gauge for making advertising decisions.

[193] The 1997 BIA database reports average station revenues and national revenues for 1996. The national revenues of owners include the revenues of stations whose sale was pending during 1997.

The data suggest that stations have disparate abilities to earn advertising dollars based upon program format, minority ownership and ownership size. General market stations perform better overall than do minority-formatted stations. Majority-owned stations generally outperform their minority competitors, even when comparing broadcasters of similar sizes.

These differences are best illustrated by examining station power ratios. The power ratio measures a station's ability to convert its share of listeners into share of advertising dollars in the market. Stations with power ratios less than 1.00 are "underselling" their audience—receiving a revenue share of the market that is less than its audience share of the market. Conversely, those with power ratios over 1.00 are "overselling" their audience—receiving a revenue share of the market that is greater than its audience share of the market.[194]

The power ratio accounts for differences in station signal quality and reach to the extent that it focuses on audience share, which may be affected by those technical characteristics. If a station's signal does not reach an entire market, it will be reflected in its audience share. However, further research should examine the impact of a station's technical characteristics on power ratios and advertising performance.

a. Power Ratios by Program Format

The revenues generated by a station provide only a partial picture of a station's advertising performance. For example, a station may earn $20 million in annual revenues. However, if $20 million represents 7 percent of the market's total revenues and the station's share of listeners in the market is 10 percent, the station is not earning revenues comparable with the number of people who listen to the station. When these percentages are equivalent (*i.e.* percentage of market revenues equals percentage of market listeners), a station has a power ratio of 1.00.

If the power ratio is less than 1.00, a station is generating less revenue than what its audience share alone might indicate. This is exemplified in Table 1 (see page 6) where two minority-formatted stations that rank second and third in market ratings have power ratios of 0.59 and 0.79, respectively. The revenues of these stations are far less than what their audience shares would suggest they may be capable of earning.

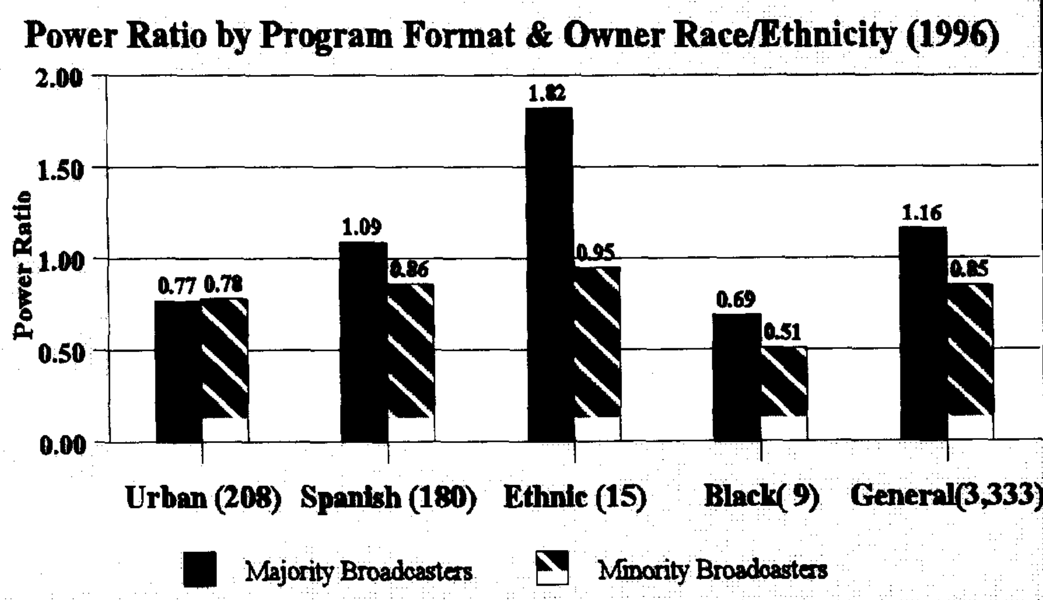
On a nationwide basis minority-formatted stations averaged power ratios of 0.91 ("underselling" their audience) and general market stations averaged 1.16 ("overselling" their audience) (Table 2). Chart J provides more detail about the power ratio performance of minority and majority owned stations by

[194] *See*, BIA Research, "Interpreting BIA's Numbers in MEDIA Access Pro," undated memo from BIA (Appendix K). According to BIA, the power ratio is calculated in a two-step process, ("The estimated revenue share for the station is determined by dividing the station revenues by the market revenues times 100. Then this calculated revenue share figure is divided by the local commercial share. A power ratio greater than 1 indicates the station is overselling its audience share; while a ratio less than 1 indicates a station underselling its audience share.").

format. Power ratios are provided for four minority formats, as well as the general market format, according to majority and minority ownership.

The average power ratio for minority-owned stations in all five of the format categories was less than one ("underselling " their audience)—0.78 for urban, 0.86 for Spanish, 0.95 for ethnic,[195] 0.51 for black, and 0.85 for general market. Majority broadcasters had average power ratios that were greater than one ("overselling" their audience) for three formats: Spanish (1.09),[196] ethnic (1.82)[197] and general market (1.16). The average power ratio was less than one ("underselling" their audience) for majority broadcasters in two formats: urban (0.77) and black (0.69). The number of stations in each program category is enclosed in parenthesis in the chart.

Chart J



[195] The power ratio for minority broadcasters with ethnic programming is based upon data for only two stations. The revenues of these two stations were higher than their majority counterparts that broadcast ethnic programming in part because one station is located in the New York metro market where stations earn relatively high average revenes (*see* chart K).

[196] The power ratio of Spanish formatted stations may be affected by undercounting of the Hispanic audience by audience research services. If audience size is underestimated by rating services, then revenue per listener (the power ratio)will be higher. Telephone interview with Tom Castro, El Dorado Communications, December 14, 1998.

[197] The power ratio for majority broadcasters with ethnic programming is based upon data for only thirteen stations.

Data: BIA MasterAccess, August 1997 edition.

The findings of CRF were consistent with those of other individuals that have done research in this area. In his 1997 report on radio revenue and ratings, James H. Duncan, Jr. examined all of the major programming formats.[198] For 1996, he reported power ratios of 0.89 for Spanish -formatted stations and 0.77 for urban/black [199] formatted stations. General market formats had a power ratio of 1.06.[200] (*See*, Appendix M for a copy of the Duncan report).

BIA Research conducted an analysis at the request of Spanish Broadcasting Systems of the performance of Hispanic and urban radio stations in the Top 50 radio markets.[201] Most Spanish and urban stations analyzed failed to generate a revenue share that equals or exceeds their local commercial share. BIA reported that during 1997, "The mean power ratio for these stations was 0.70..., implying a 30% average undersell for Hispanic and urban stations."[202] BIA commented, "In general, this data

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[198] Duncan analyzed a sample of 1,474 stations. He explained, "The stations selected for inclusion in this report are from almost all of the Arbitron standard markets — over 150 markets in all...this report includes data for over 14% of all commercial stations in the United States. Almost 47% of all reported stations in the Arbitron standard markets are included." Duncan's Power Ratio Analysis, Introduction, page 1. Regarding his sample selection he described his methodology, "To be selected, a station had to meet two criteria. First of all, it had to be successful in its format. I estimate that around 90% of the stations are the ratings leader in its [sic] format. The remaining stations were also very successful stations, even though they were not the format leader in their market. Secondly, I only used stations whose revenue figures are, in my judgment, reliable and accurate." *Id.* Duncan also adjusted local commercial share data to account for non-commercial stations, out of market stations, and stations which do not have enough audience to qualify for a listing in the Arbitron book. *Id.,* page 3.

[199] Urban/black includes black, urban, and black adult contemporary. *See* note 37, *supra.*

[200] The general market formats Duncan examined were: News & News/Talk, Adult Contemporary, Sports, Full Service, Country, Album Oriented Rock, Classic Rock, Oldies (50s/60s), Oldies/Classic Hits, Talk & Talk/News, Contemporary Hit Records (CHR)/ Top 40, Soft Adult Contemporary, Jazz, Classical and Standards/Nostalgia. Note 198, *supra.*

[201] BIA Research, Inc., Letter to William Kennard, Chairman, Federal Communications Commission, from Thomas J. Buono, President/CEO, July 7, 1998 enclosing BIA Analysis of Hispanic and urban Formatted Stations in the Top 50 Markets, BIA Research, Inc. (See Appendix L). BIA searched its 1998 Media Access Pro software and database for all Spanish and urban format stations in the Top 50 markets, and analyzed performance based on market size, local commercial listening, revenue shares and power ratios.

[202] *Id.*, at 2.

indicates that it has been very difficult for Hispanic and urban stations to obtain a significant share of revenues, even with acceptable ratings."[203]

Examples from the nation's top markets substantiate these findings. BIA noted:

> *KLVE (FM), Heftel Broadcasting's leading Spanish station, is the most listened to station in Los Angeles by a wide margin. Yet, its estimated power ratio was just 62% [0.62] for 1997 and it ranked 8th in terms of estimated revenues for the year. In New York, Emmis Broadcasting's WQHT (FM) offers an Urban/Rap format and its been the first or second highest rated station over the last couple of years. However, its estimated power ratio was just 70% [0.70] during 1997 and it ranked just 10th in terms of estimated revenues. Another example is WSKQ (FM), Spanish Broadcasting Systems' leading Spanish station in New York. This station has been one of the top rated stations in New York over the past year, but its estimated power ratio in 1997 was just 72% [0.72] and its estimated revenues ranked 13th.*[204]

Duncan documented this pattern over time. Between 1991 and 1996, the power ratio averaged 0.96 for Spanish formats and 0.73 for urban/black formats, with a combined average of 0.85. For general market formats, the average power ratio between 1991 and 1996 was 1.07.[205] The historical data indicate that it has been more difficult for urban and Spanish formats to convert audience listener share into market dollars than general format stations, consistent with the anecdotal evidence in this study. This time series analyses, however, did not control for other factors (*e.g.* ownership size and audience income) that could affect format advertising performance. Further research should be undertaken in this area.

b. Station Revenues by Program Format

CRF also compared the revenue performance of minority and general market formats according to ethnic/racial ownership. Overall, general market stations averaged revenues that were 12% higher than minority-formatted stations: $2.20 million compared to $1.96 million. Majority broadcasters outperformed minority broadcasters in both program formats. Majority broadcasters averaged revenues that were 79% higher than minority broadcasters in the general market format. Their revenues were 20% higher than minority broadcasters in the minority-format category (see Table 2).

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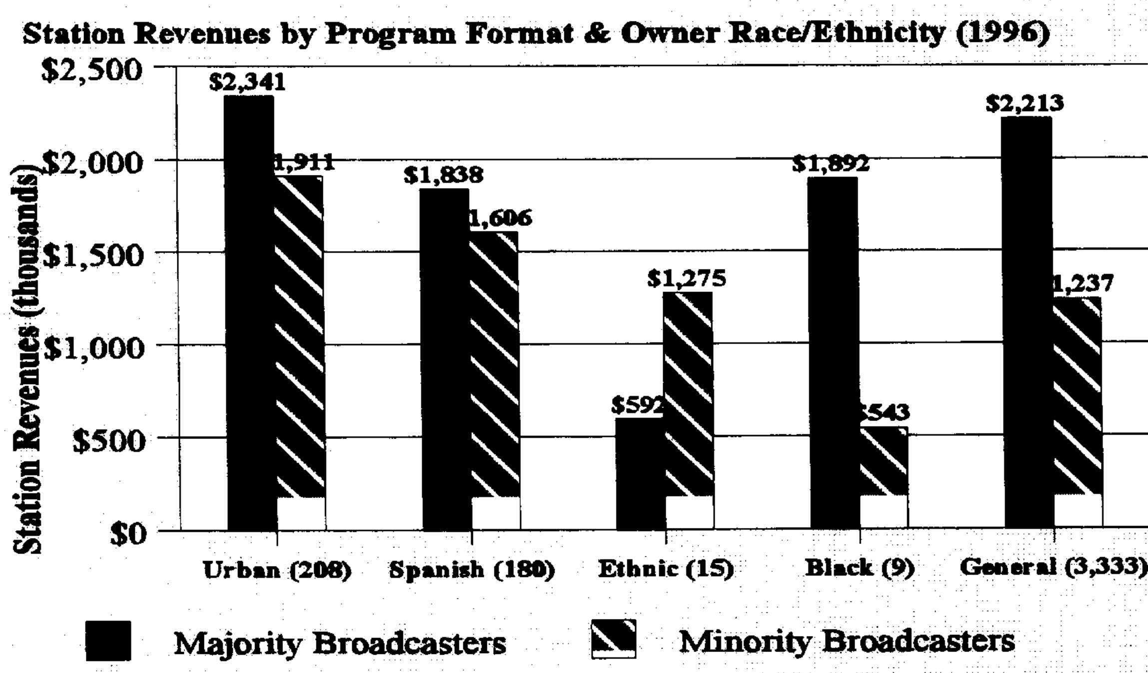
203 *Id.*

204 *Id.*

205 *See,* Duncan's Power Ratio Analysis at 5-6. General market formats include those listed in footnote 200, except for Oldies/Classic Hits which was not reported in Duncan's historical table. Duncan noted that power ratio information was not available before 1994 for Sports formatted stations, or before 1995 for Oldies (70's) stations, so the averages were used for the available years in those formats. *Id.*, at 5-6.

Chart K[206] provides more detail about the revenue performance of minority and majority owned stations by format. With the exception of ethnic radio, the average revenues of minority owned stations were less than the revenues of majority owned stations in each of the format categories: $1.9 million for minority-owned urban stations, compared to $2.3 million for majority-owned urban stations; $1.6 million for minority-owned Spanish stations, compared to $1.8 million for majority-owned Spanish stations; $0.5 million for minority-owned black formatted stations, compared to $1.9 million majority-owned black formatted stations; and $1.2 million for minority-owned general market stations compared to $2.2 million for majority-owned general market stations. The two minority-owned ethnic radio[207] stations in the data set exceeded their majority counterparts in terms of revenues. Average station revenues were $1.2 million for minority broadcasters compared to $0.6 for majority broadcasters in the ethnic format category.

Chart K



[206] Numbers in parenthesis in Chart K represent the number of stations in the data set with the program format indicated.

[207] Average revenues for minority broadcasters with ethnic programming is based upon data for only two stations. These two stations had power ratios that were less than their majority counterparts. One of the stations, WNJR-AM is located in New York City where stations earn high average revenues. The other minority-owned ethnic station is located in Corpus Chisti, Texas. The market locations and presence of only two minority broadcasters in the ethnic format may account for the high average revenues (*see* Chart J).

Data: BIA MasterAccess, August, 1997 edition.

In the next section advertising performance is examined from the standpoint of program format, minority ownership and ownership size.

c. Advertising Performance by Minority Ownership and Ownership Size

Table 2 shows an analysis of the advertising performance of 3,745 stations yielded by a search of BIA's 1997 database. Column one indicates the category of broadcaster analyzed. The categories for general format and minority-format broadcasters are: 1) all majority owners, 2) small majority owners, and 3) minority owners.[208] Column two indicates the average (mean) 1996 national revenues for all stations owned by broadcasters in each category. Column three shows the average number of stations owned nationally by broadcasters in each category, (*e.g.,* minority-owned, minority-formatted broadcasters owned an average of 4.4 stations nationally). Column four indicates the average 1996 revenues of stations owned by broadcasters in each category. Column five shows the average power ratios for each category of broadcaster.

Column 5 indicates that all general format stations outperform all minority-format stations in terms of power ratios—1.16 versus 0.91. A comparison of minority and majority broadcasters within the two categories of program formats (general market or minority format) indicates that stations owned by majority broadcasters, regardless of ownership size, appear to have a greater ability to convert their listener share into revenues.

Majority broadcasters that owned minority-formatted stations averaged power ratios of 0.95, compared to 0.82 for minority broadcasters. Controlling for ownership size,[209] the pattern of disparities favoring majority broadcasters appears to persist.

Minority broadcasters were compared with majority broadcasters of comparable size in both program format categories. For general market stations, minority broadcasters were compared with majority broadcasters that owned 26 or fewer stations. This range of ownership is based upon the maximum number of stations owned by a minority broadcaster in this format category.[210] As column

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[208] The numbers in parenthesis in column one indicate the number of stations in that category, (*e.g.* 116 minority-owned, minority-format stations).

[209] Also note discussion in Section II-C-3 regarding the relationship between ownership size and advertising performance.

[210] According to the August 1997 edition of the BIA MasterAccess database Willis Broadcasting, which is listed by NTIA's Minority Broadcasting Report as minority-owned, owned 26 stations nationwide. Many of Willis' stations are classified as "Religion" or "Gospel." Some of Willis' programming may be minority-oriented, despite its formal classification. As noted earlier, stations sometimes avoid "urban" or other minority-format classifications to escape "no Urban

three of Table 2 indicates, both small majority owners and minority owners broadcasting to the general market, owned an average of 7.4 stations nationally. Regarding power ratios, small majority broadcasters (i.e. those with 26 or fewer stations) had an average power ratio of 1.16; minority broadcasters had an average power ratio of 0.85.[211]

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dictates." Ben Carter telephone interview, August 5, 1998. Further research should investigate the relationship between power ratios and other performance measures, and the racial/ethnic composition of the audience.

[211] The lower power ratios of minority owners in general format may be accounted for, in part, by the fact that many of those stations may still be minority-targeted, though they don't use the minority-format classification. In Barthwell Evan's study of African-American broadcasters, Carter Broadcasting described its stations in Kansas City, Missouri as "general market with Black news." "Radio Broadcasting," 8 Yale Law & Policy Review 380, 405. Barthwell Evans observed that "some African-American broadcasters may not want to characterize their stations as Black or Urban-formatted because they feel station formats make it more difficult to attract advertising revenue than general market or 'disco' stations, which nonetheless may be targeted toward African-American audiences. This avoidance of a Black-format label is understandable since analyses indicate that urban, news or general market stations are much more likely to earn proportionately greater advertising revenues when compared to audience shares." *Id.* at 405-406.

Table 2

Comparison of Minority and Majority Broadcasters by Format

(All figures are averages. Currency in thousands)

(number of stations)	'96 Nat Rev	# Nat. Stat.	'96 Stat. Rev.	Power Ratio
General Formats	$129,059	42.5	$2,202	1.16
Majority Owned - All (3293)	$130,497	43	$2,214	1.16
Majority Owned - Small (2,288)	$13,040	7.4	$1,410	1.16
Minority Owned - All (39)	$7,630	7.4	$1,237	0.85
Minority Targeted Formats	$86,125	26.3	$1,958	0.91
Majority Owned - All (297)	$116,574	34.8	$2,052	0.95
Majority Owned - Small (193)	$7,387	4.9	$1,038	0.99
Minority Owned - All (116)	$8,164	4.4	$1,717	0.82

Data: BIA MasterAccess, August, 1997 edition.

Minority-owned, minority-format broadcasters were compared with majority broadcasters that air minority-format programming and that owned 17 or fewer stations, reflecting the maximum number of stations owned by a minority broadcaster in this format category.[212] Column three indicates that small majority owners broadcasting in minority formats, owned an average of 4.9 stations nationally, compared to an average of 4.4 stations nationally for minority owners broadcasting in minority formats. In terms of power ratios, column five shows that small majority broadcasters outperformed minority

[212] Minority-owned broadcaster, Z Spanish Radio, had the largest number of minority-formated stations. *See,* NTIA Broadcast Ownership Report, 1997; BIA MasterAccess database, 1997.

broadcasters in the minority-format category.[213] The average power ratio for small majority broadcasters was 0.99, compared to 0.82 for minority broadcasters.

In terms of station revenues (Table 2, column 4), general market stations averaged revenues that were 12% greater than minority-formatted stations. Majority broadcasters, overall, outperformed minority broadcasters within both format categories. Station revenues for majority broadcasters that air general market programming were on average 79% greater than minority competitors within the same format. Majority broadcasters that air minority-formatted programming averaged revenues that were 20% higher than minority broadcaster in the same format category.

A revenue comparison of broadcasters of comparable size[214] indicates that general market majority-owned broadcasters averaged revenues that were 14% greater than minority-owned stations within the same format category. Minority owned stations that air minority-formatted programming averaged revenues that were 65% greater than small majority competitors in the same format category.

However, as noted above, minority owned stations are, on the whole, underperforming in terms of power ratios, compared to majority broadcasters in either format group. In other words, given the size of their audience share, one might expect that minority-owned, minority-formatted stations would outperform their small majority-owned counterparts in terms of revenues by even greater margins.

Additionally, the revenue comparisons presented in Table 2 may be affected by the fact that minority broadcasters are more concentrated in markets where stations earn greater revenues. Stations in the large urban markets (e.g. New York and Los Angeles) average higher revenues than stations in the smaller metro markets. For example, average station revenues in market #1 (New York) are $15.57 million compared to $3 million in market #30 and $1.24 million in market #60.

Significantly, there is a greater concentration of minority-owned broadcasters than small majority-owned broadcasters in the large metro markets. Chart L[215] indicates that 20% of the stations owned by minorities are located in markets 1 - 11, compared to markets 1- 30 for small majority broadcasters. Sixty percent of minority owned stations are located in markets 1- 65 compared to markets 1-104 for small majority broadcasters. The differences in market rank distribution between these two categories of owners affect station revenues. For this reason, future research should control for market rank when making revenue comparisons.

[213] It is recommended that subsequent research compare stations with the same format controlling for audience income and market rank.

[214] The basis of the revenue comparison of broadcasters of comparable size was the same as that for the power ratio comparison.

[215] Comparisons in Chart L are between all 3,745 stations in the data set ("All Broadcasters"), majority-owned/minority-formatted stations with 17 or fewer stations ("Small Majority-Owned"), and minority-owned/minority-formatted stations ("Minority Owned").